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EXAMINER

JARRETT, SCOTT L

ART UNIT	PAPER NUMBER
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3623

MAIL DATE	DELIVERY MODE
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09/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/081,020

Applicant(s)

FUNG ET AL.

Examiner

Scott L. Jarrett

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-75 is/are pending in the application.
- 4a) Of the above claim(s) 45-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-44 and 60-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 29, 2007 has been entered.

Applicant's amendment canceled claim 12, withdrew claims 45-59, amended claims 1-11, 13-44 and 60-75. Currently claims 1-11, 13-44 and 60-75 are pending.

Response to Amendment

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Response to Arguments

3. Applicant's arguments with respect to claims 1-11, 13-44 and 60-75 have been considered but are moot in view of the new ground(s) of rejection.

Title

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: System and Method For Recommending Actions to Improve Retail Store Performance Based On The Analysis of Employee and Store Performance Data.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 11, 19, 37, 63 and 69 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding Claim 11 the disclosure fails to state or teach one of ordinary skill in the art how to establish a staffing profile, indicative of *optimal staffing levels for each of the sales employee levels*, operable to obtain the timely performance goal. Without this disclosure one skilled in the art would be unable to practice the invention without undue experimentation.

Regarding Claim 19 the disclosure fails to state or teach one of ordinary skill in the art how to create a staffing profile comprises an *optimal aggregation of sales employees of different skill levels*. Without this disclosure one skilled in the art would be unable to practice the invention without undue experimentation.

Regarding Claim 37 the disclosure fails to state or teach one of ordinary skill in the art how to develop, and subsequently output, optimal staffing profiles. Without this disclosure one skilled in the art would be unable to practice the invention without undue experimentation.

Regarding Claims 63 and 69 the disclosure fails to state or teach one of ordinary skill in the art how to define a staffing profile indicative of an *optimal combination of employees based on the performance data*. Without this disclosure one skilled in the art would be unable to practice the invention without undue experimentation.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-2, 13-27, 38, 41-44 and 73-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Winning Retail: A Self Assessment and Instructional Guide for Independent Retailers (1997, herein after WR).

Regarding Claims 1, 15, 20, 25 and 73-75 WR teaches a system and method for measuring and analyzing store performance comprising:

- collecting store sales activity transaction data, indicative of store performance, from a plurality of available computer data sources having *any of* (any combination of, at least one of, etc.) field performance, external, legacy (existing, old, etc.) or training data, via a subsystem (data store, database, POS terminals, etc.; Chapter 8, Column 2, Paragraph 1, Page 5; Chapter 12, Number 7, Page 4; Chapter 12, Number 10, elements 1, 9, 12, 13, 14, 18, Pages 5-6; Chapter 12, Numbers 20-22, Page 8);
- analyzing the transaction data to compute a aggregate synopsis (report results corresponding to quantitative data; performance summary, performance statistics, performance report, etc.) of performance of a subject (store, clerk, personnel, division, product, etc.) under observation, via a subsystem (analysis engine; Chapter 8, Number

Art Unit: 3623

8, Pages 12-14; Chapter 11, Pages 10, 14, 18, 22, 26; Chapter 12, Number 21, Page 8; Reports, Chapter 12, Number 11, Page 6);

- developing at least one of a plurality of recommended actions (ideas, suggestion, training, coaching plan; etc.; Chapter 8, Column 1, Paragraph 2, Page 6; Chapter 8, Column 1, Numbers 1-3, Page 7; Chapter 8, Column 2, Number 1, Page 7;) for store improvement;

- applying the determined recommended actions to the subject under observation (Figure, Chapter 1, Page 4; Figure, Chapter 1, Page 4; Column 2, Bullet 4, Chapter 7, Page 5; Column 2, Last Bullet, Last Paragraph, Chapter 7, Page 5; Column 1, Last Paragraph, Column 2, Last Bullet, Chapter 7, Page 9; Chapter 8, Column 2, Paragraphs 1-2, Page 8; Chapter 8, Number 8, Pages 12-14); and

- measuring a change (improvement, impact, effect, result, etc.) on store performance as a result of the subject under observation applying the determined recommended actions, via a subsystem (hypothesizer; continuous improvement, track/monitor progress; Figure, Chapter 1, Page 4; Chapter 8, Column 2, Paragraph 2, Page 7; Chapter 8, Column 2, Paragraphs 1-2, Page 8).

WR further teaches a plurality of transactional data systems (stores, files, applications, subsystems, computers, POS terminals, inventory system/program, etc.) to gather transactional data (Chapter 12, Pages 3, 6-8).

Art Unit: 3623

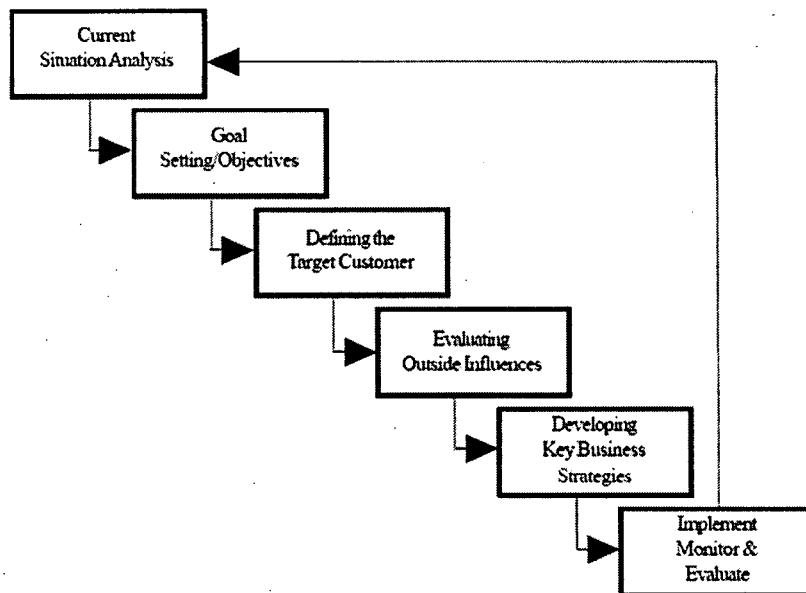
THE RETAILING STRATEGY MODEL

Figure 1: Figure, Chapter 1, Page 4

WEEKLY SCHEDULE

WEEK OF _____	LOCATION _____							
	MON	TUES	WED	THURS	FRI	SAT	SUN	TOTAL
PROJECTED								
NAME								
Sam	750 \$	off	500 \$	600 \$	670 \$	670 \$		3 190 \$
	9-6		9-6	9-6	1-9	9-6		40
Lisa	750 \$	500 \$		600 \$	670 \$	670 \$		3 190 \$
	9-6	9-6	off	1-9	9-6	9-6		40
Mary		500 \$	500 \$					1 000 \$
		9-6	9-6					16
Bill						670 \$		670 \$
						9-6		8
Harvey					330 \$	495 \$		1 125 \$
					5-9	11-6		14
Mike				300 \$	330 \$	495 \$		1 125 \$
				5-9	5-9	9-6		14
TOTAL	1 500	1 000	1 000	1 500	2 000	3 000		10 000
Sales/hr	93,76 \$	62,50 \$	62,50 \$	75,00 \$	83,33 \$	78,95 \$		78,73 \$

Figure 2: Table, Chapter 8, Page 10

Art Unit: 3623

INDIVIDUAL PERFORMANCE SUMMARY

EMPLOYEE _____	STORE _____							
	MON	TUES	WED	THURS	FRI	SAT	SUN	TOTAL
DATE	10/12	10/13	10/14	10/15	10/16	10/17	10/18	
TOTAL SALES	807,22	377,06	-	622,11	811,00	715,62	-	3 373,01
TOTAL CUSTOMERS	20	12	-	21	17	22	-	92
TOTAL ITEMS	33	20	-	30	33	36	-	152
SCHEDULED HOURS	9-6	9-6	off	1-9	9-6	9-6	off	40
SELLING HOURS	8	8	-	8	8	8	-	40
ITEMS / SALE	1,65	1,67	-	1,43		1,64	-	1,65
AVERAGE SALE	40,76	31,42	-	31,53		32,57	-	36,66
SALES / HOUR	100,90	47,13	-	82,76		89,45	-	84,33

Figure 3: Table, Chapter 8, Page 12, emphasis added

WEEKLY ANALYSIS

Store # 222

Week ending March 12 / 95

Totals

Sales Person	Sam	Tom	Sue	Jane	Phil		
Clerk Number	1	3	4	5	7		
Employee Number	221	329	782	417	523		
Hours Worked	42	42	40	23	9		156,00
Total Sales	4731,08	2 817,25	2746,57	1 790,25	723,12		12 808,27
Total Customers	72	55	49	46	13		235,00
Total Items	173	95	115	120	30		533,00
Items / Sale	2,4	1,73	2,35	2,61	2,3		2,27
Average sale	65,71	51,22	56,05	38,92	55,62		54,50
Sales / Hours	112,64	67,08	68,66	77,84	80,35		82,10

Figure 4: Table, Chapter 8, Page 13, emphasis added

Art Unit: 3623

Category: All Apparel Stores

PERFORMANCE STATISTICS	ENTER YOUR RESULTS	TYPICAL RESULTS	
		Current year	Prior year
PROFITABILITY			
Net profit after tax to net sales	_____	1.63%	2.05%
Net profit after tax to total assets	_____	6.40%	8.46%
Net profit after tax to net worth	_____	17.08%	23.86%
PRODUCTIVITY			
Net sales per store	_____	\$928,787	\$922,353
Net sales per square foot of total store area	_____	\$284.34	\$346.83
Average store size	_____	3,266 ft	2,659 ft
INVENTORY			
Gross margin to net sales	_____	41.66%	40.94%
Gross margin return on inventory	_____	292.01%	296.20%
Inventory turnover	_____	4.11	4.40
PERSONNEL			
Sales per employee	_____	\$130,155	\$125,484
Number of part-time employees as % of total part-time and full-time employees	_____	45.75%	45.04%

Figure 5: Chart, Chapter 11, Page 10, emphasis added

It is noted that the label used to describe the recommended actions, hypothesis, merely represents non-functional descriptive material and is not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific label used to describe the plurality of field performance data. Further, the structural elements remain the same regardless of the specific label used to describe the recommended actions. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms

of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claims 2 and 21 WR teaches a store performance evaluation system and method wherein measuring a change further comprises repeating iteratively the method steps (i.e. feedback mechanism for monitoring recommended actions and gathering, in an iterative manner, additional transaction data of an effect of the implemented recommendations; Figure, Chapter 1, Page 4; Column 2, Bullet 4, Chapter 7, Page 5; Column 2, Last Bullet, Last Paragraph, Chapter 7, Page 5; Column 1, Last Paragraph, Column 2, Last Bullet, Chapter 7, Page 9; Chapter 8, Column 2, Paragraphs 1-2, Page 8; Chapter 8, Number 8, Pages 12-14).

Regarding Claim 13 WR teaches a store performance evaluation system and method wherein the field performance data includes *at least one* of the following sales per hour, dollars per transaction, units per transaction, traffic conversion percentage, customer traffic count *or* periodic goals (Chapter 8, Numbers 4-6, Pages 5-8).

It is noted that the labels used to describe the plurality of field performance data merely represents non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific labels used to describe the plurality of field performance data. Further, the structural elements remain

Art Unit: 3623

the same regardless of the specific labels used to describe the plurality of field performance data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 14 WR teaches a store performance evaluation system and method wherein the external data includes *at least one of* the following administrative, tax, market research, merchandising group, human resource or store revenue goal data (Chapter 8, Column 2, Paragraph 1, Page 5; Chapter 12, Number 7, Page 4; Chapter 12, Number 10, elements 1, 9, 12, 13, 14, 18, Pages 5-6; Chapter 12, Numbers 20-22, Page 8).

It is noted that the labels used to describe the plurality of external data merely represents non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific labels used to describe the plurality of external data. Further, the structural elements remain the same regardless of the specific labels used to describe the plurality of external data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 16 WR teaches a store performance evaluation system and method wherein the transaction data corresponds to retail stores and sales employees (Chapter 12, Numbers 20-22, Page 8).

Regarding Claim 17 WR teaches a store performance evaluation system and method further comprising skill development at the sales employee level and business scenarios/strategies at a store level (Chapter 7, Number 6, Pages 7-8; Chapter 7, Number 9, Page 9; Chapter 8, Numbers 4-8, Pages 5-14; Chapter 12, Numbers 20-22, Page 8).

Regarding Claim 18 WR teaches a store performance evaluation system and method further comprising recommended actions/strategies/business scenarios to improving business operations and staffing profiles for increased sales (Chapter 7, Number 6, Pages 7-8; Chapter 7, Number 9, Page 9; Chapter 8, Numbers 4-8, Pages 5-14; Chapter 12, Numbers 20-22, Page 8).

Regarding Claim 22 WR teaches a store performance evaluation system and method further comprising a security scheme for providing selected access to the transaction data determined as a function of need to know and a user's store management role within the sales organization (Chapter 12, Number 24, Page 9).

Art Unit: 3623

Regarding Claim 23 WR teaches a store performance evaluation system and method further comprising a learning center (performance board, coaching plan, etc.) to implement the determined recommended actions (Chapter 7, Column 2, Last Paragraph, Page 4; Charts Chapter 8; Chapter 8, Column 1, Paragraph 2, Page 12; Chapter 8, Page 9; Chapter 8, Number 10, Page 15).

Regarding Claims 24 WR teaches a store performance evaluation system and method wherein the feedback mechanism is used to monitor an advancement cycle of a sales employee based on the transactional data and a management certification (employee development; Chapter 7, Number 1, Page 3, Number 4, Page 4-5, Number 6, Pages 7-8, Number 9, Page 9; Chapter 8, Number 8, Pages 12-14; Number 9, Pages 14-15).

Regarding Claim 26 WR teaches a store performance evaluation system and method further comprising a database to store a plurality of normalized data records and a knowledge base to store aggregate data having a plurality of granularity levels (Chapter 8, Column 2, Paragraph 1, Page 5; Chapter 12, Number 7, Page 4; Chapter 12, Number 10, elements 1, 9, 12, 13, 14, 18, Pages 5-6; Chapter 12, Numbers 10-11, Pages 5-6; Chapter 12, Numbers 20-22, Page 8).

Regarding Claim 27 WR teaches a store performance evaluation system and method further comprising generating a plurality of performance scores to be compared

Art Unit: 3623

to a predetermined performance range (goals, standards, benchmarks, etc.; Chapter 8, Numbers 5-8, Pages 5-14).

Regarding Claim 38 WR teaches a store performance evaluation system and method further comprising an operator for manual inspection of the aggregate synopsis (Chapter 8, Number 8, Pages 12-14; Chapter 11, Pages 10, 14, 18, 22, 26; Chapter 12, Number 21, Page 8; Reports, Chapter 12, Number 11, Page 6).

Regarding Claims 41-43 WR teaches a store performance evaluation system and method wherein the plurality of recommended actions correspond to a library of multimedia solutions which provide educational development of skill and knowledge (curricula, coursework, training, etc.) and include magnetic, optical or printed materials (videos, training materials, training support, classroom, etc.; Column 2, Last Paragraph, Chapter 7 Page 4).

Regarding Claim 44 WR teaches a store performance evaluation system and method further comprising computing quantitative data and generate qualitative conclusions (Chapter 8, Number 8, Pages 12-14; Chapter 11, Pages 10, 14, 18, 22, 26; Chapter 12, Number 21, Page 8; Reports, Chapter 12, Number 11, Page 6).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3-11, 19, 28-37, 39-40 and 60-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winning Retail: A Self Assessment and Instructional Guide for Independent Retailers (1997, herein after WR) as applied to claims 1-2, 13-27, 38, 41-44 and 73-75 above and further in view of Ibarra, U.S. Patent No. 6,119,097.

Regarding Claims 3 and 28-29 WR teaches a store performance evaluation system and method further comprising:

- comparing the aggregate synopsis to performance scores (values, ratings, metrics, measures, etc.) within a predetermined performance range (goal, threshold, levels, etc.; Chapter 8, Numbers 4-8, Pages 5-13); and
- mapping (matching) the aggregate synopsis to the plurality of recommended actions (Chapter 8, Numbers 4-8, Pages 5-13).

WR does not expressly teach mapping (matching) the aggregate synopsis to the plurality of recommended actions in the *predetermined range* as claimed.

Art Unit: 3623

Ibarra teaches a system and method for performance evaluation comprising: comparing the aggregate synopsis to performance scores (values, ratings, metrics, measures, etc.) within a predetermined performance range (levels, standards, etc.; Column 8, Lines 57-68; Column 9, Lines 4-19; Figure 10); and mapping (matching) the aggregate synopsis to the plurality of recommended actions in the predetermined range (standards, check-up, problem-solving worksheet; Column 2, Lines 55-68; Column 4, Lines 40-63; Column 5, Lines 20-30; Column 6, Lines 53-68; Column 7, 42-68; Column 10, Lines 15-31; Figures 4, 11) in an analogous art of performance management for the purposes of assisting employees in meeting performance standards/goals by selecting and implementing the recommended actions (action steps, problem-solving worksheet) most likely to result the employee in at least meeting the performance standard (Column 2, Lines 60-65).

More generally Ibarra teaches a retail performance evaluation system and method comprising:

- collecting store sales activity transaction data (activities), indicative of an employees performance (Column 2, Lines 3-31; Column 16, Lines 15-27; Figure 2);
- analyzing the transaction data to compute a aggregate synopsis of performance of a subject under observation, via a subsystem (Column 6, Lines 1-25, 53-60);
- developing at least one of a plurality of recommended actions for store improvement (Column 6, Lines 61-68; Column 7, Lines 1-7, 43-68);

Art Unit: 3623

- applying the determined recommended actions to the subject under observation (Column 1, Lines 55-65; Column 7);
- measuring a change (improvement, impact, effect, etc.) on store performance as a result of the subject under observation applying the determined recommended actions, via a subsystem (Column 7, Lines 3-5; Column 8, Lines 5-9);
- wherein the subject under observation further comprises a sales employee having a plurality of levels and performance standards for each level (Column 4, Line 25; Column 6, Lines 53-68; Column 10, Lines 15-25; Figure 10).

It would have been obvious to one skilled in the art at the time of the invention that the retail store and employee performance evaluation system and method as taught by WR would have benefited from mapping (matching) the aggregate synopsis to the plurality of recommended actions in the predetermined range in view of the teachings of Ibarra; the resultant system/method assisting employees in meeting the performance standards/goals by selecting the recommended actions (action steps, problem-solving worksheet) most likely to result the employee in at least meeting the performance standard (Ibarra: Column 2, Lines 60-65).

Regarding Claim 4 WR teaches a store performance evaluation system and method further comprising providing performance standards (goals, targets, benchmarks, etc.), each corresponding to at least a portion of the aggregate synopsis (Chapter 8, Numbers 4-8, Pages 5-13). WR further teaches posting the aggregate

Art Unit: 3623

synopsis data for both stores and employees thereby enabling stores/employees to see their performance relative to others, store averages or the like (Chapter 8, Column 1, Paragraph 2, Page 12; Chapter 8, Number 10, Page 15).

WR does not expressly teach that the intended use of the provided performance standards is for determining a ranking within the predetermined performance range as claimed.

Ibarra teaches that utilizing performance ranges (standards, goals, etc.) to rank employees, stores, departments, or the like is a common business practice (Column 1, Lines 20-30) in an analogous art of performance management for the purposes of comparing performance between employees (subjects) for promotions, bonuses or to support other management decisions (Column 1, Lines 20-30).

Ibarra further teaches ranking the performance of employees within predetermined ranges (levels; Column 4, Lines 52-65; Column 5, Lines 1-12; Column 10, Lines 15-25; Figure 10) for the purposes of view employees with different performance levels/ranks relative to one or more performance standards.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating store and employee performance as taught by WR with its ability to rate the employee's and/or store's performance against one or more performance standards each corresponding to at least a portion of the aggregate

Art Unit: 3623

synopsis would have benefited determining a ranking within the predetermined performance range in view of the teachings of Ibarra; the resultant system/method enabling user's to comparing performance between employees and/or stores (Ibarra: Column 1, Lines 20-30) and/or view store/employee's relative performance to the performance range.

Regarding Claims 5 and 31 WR teaches a store performance evaluation system and method wherein the subject under observation further comprises a sales employee having a plurality of levels and performance standards for each level (Chapter 8, Number 5, Pages 5-6; Chapter 8, Tables on Pages 10, 12, 13; Chapter 8, Number 7, Elements b, f, Page 11; Chapter 8, Column 1, Paragraph 5, Page 14; Chapter 8, Number 9, Pages 14-15).

Regarding Claims 6 and 32 WR teaches a store performance evaluation system and method wherein the performance standards correspond to a subset of a predefined set of customer focused skills attained by the sales employee (Chapter 7, Number 6, Pages 6-8; Chapter 7, Number 8, Pages 8-9; Chapter 8, Numbers 4-8, Pages 5-13).

Regarding Claims 7-8 and 33-34 WR teaches a store performance evaluation system and method further comprising capturing store characteristics pertinent to the transaction data as well as comparing store performances to other stores (Chapter 1, Number 7, Pages 12-13; Chapter 11, Page 9; Chapter 12, Number 10, Element 1).

WR does not expressly teach scaling performance scores corresponding to store characteristics via a scaling matrix wherein the scaling factors comprise volume, store location and timing as claimed.

Official notice is taken that it is old and well known to scale performance measures when comparing/benchmarking one or more businesses based on the characteristics of the businesses (size, sales, volume, industry, number of employees, etc.; sometime referred to standardizing or normalizing or comparative performance analysis) in order to perform an "apples-to-apples" comparison between the two businesses/enterprises/employees.

For example, if car dealership A generally has more sales volume than car dealership B, the performance standards for salespeople at each car dealership can be scaled to account for the disparity in sales volume thereby assisting in accurately analyzing and/or comparing the employees and/or store performances.

It would have been obvious to one skilled in the art at the time of the invention that the system and method that the system and method for evaluating store and employee performance would have benefited from scaling performance scores corresponding to store characteristics via a scaling matrix utilizing any of a plurality of scaling factors in view of the teachings of official notice; the resultant system/method

Art Unit: 3623

enabling users to make apples-to-apples performance comparison between different employees and/or stores.

Regarding Claims 9-10 and 35-36 WR teaches a store performance evaluation system and method further comprising setting performance goals corresponding to the subject under observation and adjusting the predetermined performance range (goals, levels) in response to the performance goal and further setting goals according to at least one of daily, weekly, monthly, quarterly or yearly intervals (Chapter 8, Number 8, Pages 12-14; Chapter 12, Number 12, Page 8).

Regarding Claim 11 WR teaches a store performance evaluation system and method further comprising establishing a staffing profile, indicative of optimal staffing levels for each of the sales employee levels, operable to obtain the timely performance goal (Chapter 8, Numbers 4-8, Pages 5-13).

Regarding Claims 19 WR a store performance evaluation system and method wherein the staffing profile comprises an aggregation of sales employees of different skill levels (Chapter 8, Numbers 4-8, Pages 5-13).

WR does not expressly teach that the aggregation of employees at different skill levels is *optimal* as claimed.

Art Unit: 3623

Official notice is taken that it is old and well known to select an "optimal" mix of employees having different skills and/or skill levels in an effort to ensure all the required/desired services/service level can be provided to customers.

For example, a retailer would know to staff a manager when scheduling one or more employees, or co-schedule experienced and inexperienced workers together vs. scheduling a shift with all new employees, or scheduling a mix of full-time and part-time employees, or scheduling someone who speaks Spanish if customer's speak primarily Spanish, and the like.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating store and employee performance as taught by WR would have benefited from determining a staffing profile comprising sales employees of different skill levels in view of the teachings of official notice.

Regarding Claim 30 WR does not expressly teach that the intended use of the provided performance standards is for determining a ranking within the *predetermined performance range* or mapping the ranking into a *predetermined list* of recommended actions as claimed.

Ibarra teaches that utilizing performance ranges (standards, goals, etc.) to rank of employees, stores, departments, or the like is old and well known (Column 1, Lines 20-30) in an analogous art of performance management for the purposes of comparing

Art Unit: 3623

performance between employees (subjects) for promotions, bonuses or other management decisions (Column 1, Lines 20-30).

Ibarra further teaches ranking the performance of employees within predetermined ranges (levels; Column 4, Lines 52-65; Column 5, Lines 1-12; Column 10, Lines 15-25; Figure 10) for the purposes of view employees with different performance levels/ranks of one or more performance standards.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating store and employee performance as taught by WR with its ability to rate the employee's and/or store's performance against one or more performance standards each corresponding to at least a portion of the aggregate synopsis would have benefited determining a ranking within the predetermined performance range in view of the teachings of Ibarra; the resultant system/method enabling user's to comparing performance between employees and/or stores (Ibarra: Column 1, Lines 20-30) and/or view store/employee's relative performance to the performance range.

Ibarra teaches defining a set of predetermined actions directed to improving store productivity (Column 6, Lines 61-68; Column 7, Lines 1-7, 43-68) as a function of skill proficiency and revenue generation (standards, check-up, problem-solving worksheet; Column 2, Lines 55-68; Column 4, Lines 40-63; Column 5, Lines 20-30; Column 6, Lines 53-68; Column 7, 42-68; Column 10, Lines 15-31; Figures 4, 11) in an analogous

Art Unit: 3623

art of performance management for the purposes of assisting employees in meeting the performance standards/goals by selecting the recommended actions (action steps, problem-solving worksheet) most likely to result the employee in at least meeting the performance standard (Column 2, Lines 60-65).

It would have been obvious to one skilled in the art at the time of the invention that the retail store and employee performance evaluation system and method as taught by WR would have benefited from defining a set of predetermined actions directed to improving store productivity as a function of skill proficiency and revenue generation in view of the teachings of Ibarra; the resultant system/method assisting employees in meeting the predetermined/predefined set of performance standards/goals by selecting the recommended actions, from a predetermined list of actions, most likely to result the employee in at least meeting the performance standard (Ibarra: Column 2, Lines 60-65).

Regarding Claim 37 WR teaches a store performance evaluation system and method further comprising providing output indicative of staffing profiles, as discussed above.

WR does not expressly teach that the staffing profiles are *optimal* as claimed.

Official notice is taken that it is old and well known to select an "optimal" mix of employees having different skills and/or skill levels in an effort to ensure all the required/desired services/service level can be provided to customers.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating store and employee performance as taught by WR would have benefited from determining a staffing profile comprising sales employees of different skill levels in view of the teachings of official notice.

Regarding Claims 39-40 and 70 WR does not expressly expert system operable for quantitative analysis.

Official notice is taken that utilizing expert systems (artificial intelligence, rule-based, decision support systems, knowledge based, etc.) to automate decision making, planning or other business functions is old and very well known wherein expert systems provide a known benefit of "emulating" the knowledge and analytical skills of one or more human experts.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating store and employee performance as taught by WR would have benefited from using any of a plurality of well known automation techniques and/or system architectures including but not limited to expert systems in

Art Unit: 3623

view of the teachings of official notice; the resultant system/method being capable of “emulating” the knowledge and analytical skills of one or more human experts.

Regarding Claim 60 WR a system and method for improving store performance comprising:

- gathering store sales activity transaction data corresponding to at least one employees from a plurality of available computer data sources having *at least one of the* following external, legacy, field performance or training data (Chapter 8, Column 2, Paragraph 1, Page 5; Chapter 12, Number 7, Page 4; Chapter 12, Number 10, elements 1, 9, 12, 13, 14, 18, Pages 5-6; Chapter 12, Numbers 20-22, Page 8; Chapter 12, Number 7, Page 4);

- analyzing the transaction data, indicative of revenue generation and skill proficiency of at least one employee, to determine a ranking of employee performance (Chapter 8, Number 8, Pages 12-14; Chapter 11, Pages 10, 14, 18, 22, 26; Chapter 12, Number 21, Page 8; Reports, Chapter 12, Number 11, Page 6);

- defining a set of actions directed to improving store productivity as a function of skill proficiency and revenue generation (.; Chapter 8, Column 1, Paragraph 2, Page 6; Chapter 8, Column 1, Numbers 1-3, Page 7; Chapter 8, Column 2, Number 1, Page 7);

- correlating the ranking (rating, scoring, etc.) with the set of actions, the actions directed to improving qualitative aspects of a store (Figure, Chapter 1, Page 4; Column 2, Bullet 4, Chapter 7, Page 5; Column 2, Last Bullet, Last Paragraph, Chapter 7, Page

Art Unit: 3623

5; Column 1, Last Paragraph, Column 2, Last Bullet, Chapter 7, Page 9; Chapter 8, Column 2, Paragraphs 1-2, Page 8; Chapter 8, Number 8, Pages 12-14);

- implementing at least one of the predetermined actions, based on the correlation (Figure, Chapter 1, Page 4; Figure, Chapter 1, Page 4; Column 2, Bullet 4, Chapter 7, Page 5; Column 2, Last Bullet, Last Paragraph, Chapter 7, Page 5; Column 1, Last Paragraph, Column 2, Last Bullet, Chapter 7, Page 9; Chapter 8, Column 2, Paragraphs 1-2, Page 8; Chapter 8, Number 8, Pages 12-14); and

- measuring productivity improvement of the store resulting from the implementation of the predetermined actions (Figure, Chapter 1, Page 4; Chapter 8, Column 2, Paragraph 2, Page 7; Chapter 8, Column 2, Paragraphs 1-2, Page 8).

WR does not expressly teach defining a set of *predetermined actions* directed to improving store productivity as a function of skill proficiency and revenue generation as claimed.

Ibarra teaches defining a set of predetermined actions directed to improving store productivity (Column 6, Lines 61-68; Column 7, Lines 1-7, 43-68) as a function of skill proficiency and revenue generation (standards, check-up, problem-solving worksheet; Column 2, Lines 55-68; Column 4, Lines 40-63; Column 5, Lines 20-30; Column 6, Lines 53-68; Column 7, 42-68; Column 10, Lines 15-31; Figures 4, 11) in an analogous art of performance management for the purposes of assisting employees in meeting the performance standards/goals by selecting the recommended actions (action steps,

Art Unit: 3623

problem-solving worksheet) most likely to result the employee in at least meeting the performance standard (Column 2, Lines 60-65).

It would have been obvious to one skilled in the art at the time of the invention that the retail store and employee performance evaluation system and method as taught by WR would have benefited from defining a set of predetermined actions directed to improving store productivity as a function of skill proficiency and revenue generation in view of the teachings of Ibarra; the resultant system/method assisting employees in meeting the predetermined/predefined set of performance standards/goals by selecting the recommended actions, from a predetermined list of actions, most likely to result the employee in at least meeting the performance standard (Ibarra: Column 2, Lines 60-65).

Regarding Claims 61-62 WR teaches a store performance evaluation system and method wherein measuring a change further comprises repeating iteratively the method steps (i.e. feedback mechanism for monitoring recommended actions and gathering, in an iterative manner, additional transaction data of an effect of the implemented recommendations; Figure, Chapter 1, Page 4; Column 2, Bullet 4, Chapter 7, Page 5; Column 2, Last Bullet, Last Paragraph, Chapter 7, Page 5; Column 1, Last Paragraph, Column 2, Last Bullet, Chapter 7, Page 9; Chapter 8, Column 2, Paragraphs 1-2, Page 8; Chapter 8, Number 8, Pages 12-14).

Regarding Claims 63 and 69 WR teaches a store performance evaluation system and method further comprising:

- defining a staffing profile indicative of an combination of employees based on the performance data, the combination including the skills of each employee (Chapter 8, Numbers 4-8, Pages 5-13); and
- implementing the staffing profile, wherein measuring further comprises measuring revenue generation in response to the implemented staffing profile (Figure, Chapter 1, Page 4; Chapter 8, Column 2, Paragraph 2, Page 7; Chapter 8, Column 2, Paragraphs 1-2, Page 8).

WR does not expressly teach that the combination of employees based on the performance data is *optimal* as claimed.

Official notice is taken that it is old and well known to select an "optimal" (best, most appropriate, etc.) mix of employees having different skills and/or skill levels in an effort to ensure all the required/desired services/service level can be provided to customers.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating store and employee performance as taught by WR would have benefited from determining a staffing profile comprising sales employees of different skill levels in view of the teachings of official notice.

Regarding Claim 64 WR teaches a method and system for assessing, developing and improving the performance of a store comprising:

- gathering transactional data indicative of the revenue generating performance of at least one subject employee via a sales transactional data interface with a plurality of computer data sources having at least one of the following field performance, legacy or training data (Chapter 8, Column 2, Paragraph 1, Page 5; Chapter 12, Number 7, Page 4; Chapter 12, Number 10, elements 1, 9, 12, 13, 14, 18, Pages 5-6; Chapter 12, Numbers 20-22, Page 8; Chapter 12, Number 7, Page 4);

- aggregating and storing the transactional data, via a data store (Chapter 8, Column 2, Paragraph 1, Page 5; Chapter 12, Number 7, Page 4; Chapter 12, Number 10, elements 1, 9, 12, 13, 14, 18, Pages 5-6; Chapter 12, Numbers 20-22, Page 8; Chapter 12, Number 7, Page 4);

- generating quantitative reports indicative of aggregate revenue generation performance of each subject employee (performance summaries, productivity reports, etc.; Chapter 8, Number 8, Pages 12-14; Chapter 11, Pages 10, 14, 18, 22, 26; Chapter 12, Number 21, Page 8; Chapter 12, Number 11, Page 6);

- determining based on the report and a performance range (level, threshold, etc.) a performance ranking (rating, score, etc.) for each employee (Chapter 8, Number 8, Pages 12-14; Chapter 11, Pages 10, 14, 18, 22, 26; Chapter 12, Number 21, Page 8; Reports, Chapter 12, Number 11, Page 6);

Art Unit: 3623

- identifying areas of improving store performance for each employee based on the performance ranking (rating, scoring, etc.; Column 2, Bullet 4, Chapter 7, Page 5; Column 2, Last Bullet, Last Paragraph, Chapter 7, Page 5; Column 1, Last Paragraph, Column 2, Last Bullet, Chapter 7, Page 9; Chapter 8, Column 2, Paragraphs 1-2, Page 8; Chapter 8, Number 8, Pages 12-14);

- mapping the identified area for improvement into a list of recommended actions for at least improving skill efficiency (Figure, Chapter 1, Page 4; Column 2, Bullet 4, Chapter 7, Page 5; Column 2, Last Bullet, Last Paragraph, Chapter 7, Page 5; Column 1, Last Paragraph, Column 2, Last Bullet, Chapter 7, Page 9; Chapter 8, Column 2, Paragraphs 1-2, Page 8; Chapter 8, Number 8, Pages 12-14);

- implementing, via a learning center (training support program, coaching plan, videos, etc.), the mapped recommend actions (Column 2, Bullet 4, Chapter 7, Page 5; Column 2, Last Bullet, Last Paragraph, Chapter 7, Page 5; Column 1, Last Paragraph, Column 2, Last Bullet, Chapter 7, Page 9; Chapter 8, Column 2, Paragraphs 1-2, Page 8; Chapter 8, Number 8, Pages 12-14); and

- measuring the effect of the recommended actions on the revenue generating performance of employees and store performance (Figure, Chapter 1, Page 4; Chapter 8, Column 2, Paragraph 2, Page 7; Chapter 8, Column 2, Paragraphs 1-2, Page 8).

Art Unit: 3623

WR does not expressly teach mapping the identified area for improvement into a *predetermined list of recommended actions* for at least improving skill efficiency as claimed.

Ibarra teaches mapping identified area(s) for improvement into a *predetermined list of recommended actions* for at least improving skill efficiency (standards, check-up, problem-solving worksheet; Column 2, Lines 55-68; Column 4, Lines 40-63; Column 5, Lines 20-30; Column 6, Lines 53-68; Column 7, Lines 1-7, 42-68; Column 10, Lines 15-31; Figures 4, 11) in an analogous art of performance management for the purposes of assisting employees in meeting the performance standards/goals by selecting the recommended actions (action steps, problem-solving worksheet) most likely to result the employee in at least meeting the performance standard (Column 2, Lines 60-65).

It would have been obvious to one skilled in the art at the time of the invention that the retail store and employee performance evaluation system and method as taught by WR would have benefited from mapping identified area(s) for improvement into a predetermined list of recommended actions in view of the teachings of Ibarra; the resultant system/method assisting employees in meeting the predetermined/predefined set of performance standards/goals by selecting the recommended actions, from a predetermined list of actions, most likely to result the employee in at least meeting the performance standard (Ibarra: Column 2, Lines 60-65).

Regarding Claim 65 WR teaches a store and employee evaluation system and method wherein the transactional data further comprises sales and customer flow data (Chapter 8, Column 2, Paragraph 1, Page 5; Chapter 12, Number 7, Page 4; Chapter 12, Number 10, elements 1, 9, 12, 13, 14, 18, Pages 5-6; Chapter 12, Numbers 20-22, Page 8; Chapter 12, Number 7, Page 4).

Regarding Claim 66 WR teaches a store performance evaluation system and method wherein the field performance data includes *at least one* of the following sales per hour, dollars per transaction, units per transaction, traffic conversion percentage, customer traffic count *or* periodic goals (Chapter 8, Numbers 4-6, Pages 5-8).

Regarding Claims 67-68 WR does not expressly a predetermined correlation, corresponding to a matrix (table, chart, etc.) of a type of employee, the performance ranking and the recommended actions as claimed.

Ibarra teaches a predetermined correlation corresponding to a matrix (table, chart, etc.) of a type of employee, the performance ranking and the recommended actions (standards, check-up, problem-solving worksheet; Column 2, Lines 55-68; Column 4, Lines 40-63; Column 5, Lines 20-30; Column 6, Lines 53-68; Column 7, Lines 1-7, 42-68; Column 10, Lines 15-31; Figures 4, 11) in an analogous art of performance management for the purposes of assisting employees in meeting the performance standards/goals by selecting the recommended actions (action steps,

Art Unit: 3623

problem-solving worksheet) most likely to result the employee in at least meeting the performance standard (Column 2, Lines 60-65).

It would have been obvious to one skilled in the art at the time of the invention that the retail store and employee performance evaluation system and method as taught by WR would have benefited from mapping identified area(s) for improvement into a predetermined list of recommended actions in view of the teachings of Ibarra; the resultant system/method assisting employees in meeting the predetermined/predefined set of performance standards/goals by selecting the recommended actions, from a predetermined list of actions, most likely to result the employee in at least meeting the performance standard (Ibarra: Column 2, Lines 60-65).

Regarding Claim 71 WR teaches a store performance evaluation system and method wherein the plurality of recommended actions correspond to a library of multimedia solutions which provide educational development of skill and knowledge (curricula, coursework, training, etc.) and include magnetic, optical or printer materials (videos, training materials, training support, classroom, etc.; Column 2, Last Paragraph, Chapter 7 Page 4).

Regarding Claim 72 WR teaches a method and system for assessing, developing and improving the performance of a store wherein the transaction data is retail sales data (Chapter 12, Numbers 20-22, 24, Pages 8-9).

Application/Control Number: 10/081,020
Art Unit: 3623

Page 35

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Fields et al., U.S. Patent No. 5,111,391, teach a system and method for determining a schedule (e.g. staffing profile) based on employee skill level, priority and availability.
- Frey, U.S. Patent No. 5,138,638, teach a system and method for evaluating retail store and employee performance based on the analysis of transactional data including customer count/traffic and conversion rates.
- Jones, U.S. Patent No. 5,832,458, teach a system and method for analyzing point-of-sales transactional data.
- Nashner, U.S. Patent No. 5,980,429, teach a system and method for monitoring and evaluating an employee performance in a training program.
- Havens, U.S. Patent No. 5,909,669, teach a system and method for evaluating employee performance and benchmarking employee's productivity.
- Cook et al., U.S. Patent No. 6,201,948, teach an expert (agent-based) system and method for evaluating a student's (employee) performance and recommending action items (training) to improve performance.
- Haq et al., U.S. Patent No. 6,275,812, teach a system and method for generating a "optimal" staffing profile (e.g. deployment/assignment schedule) based on the evaluation of employee's skills and knowledge wherein employees have various levels of skills evaluated against a predetermined range.

- McIlwaine et al., U.S. Patent No. 6,323,282, teach a system and method for evaluating the performance of an employee (call center agent, sales representatives) comprising recommending action items (individualized training, coursework) for improving employee based on an evaluation of the employee's skills and performance before wherein the actions are delivered via a learning center.

- Kintner et al., U.S. Patent No. 6,732,079, teach a system and method for determining an "optimal" staffing profile comprising different employees having different skills/performance.

- Matsko, U.S. Patent NO. 6,970,810, teach a system and method for evaluating a retail employee's performance based on the analysis of transactional data.

- Ford, U.S. Patent No. 7,035,808, teach a system and method for determining a "optimal" staffing profile comprising staff with various skills and skill levels.

- Ratteree et al., U.S. Patent Publication No. 2002/0010563, teach a system and method for verifying a performance improvement of an enterprise resulting from the implementation of one or more recommended actions.

- Green, WO 97/13229, teach a system and method for evaluating the performance of a retail employee based on the analysis of transactional data.

- Zwell, WO 01/2597 A1, teach a system and method for evaluating the performance of an employee.

- Ford, Point-of-Sale (1981), teaches the evaluation of the performance of a retail store and employee based on the analysis of transactional data collected via a point-of-sale system wherein actions for improving the store and/or employees

Art Unit: 3623

performance are determined based on the analysis/evaluation (e.g. staffing profile – optimum selling hours, input to training programs/departments, etc.).

- Grant et al., Computerized Performance Monitors as Multidimensional Systems (1996), teach the well-known utilization of systems and methods for evaluating worker performance through the collection and analysis of monitored worker data.

- Kahn, Tailor-made training (1997), teaches a learning center (RetailNet) for providing interactive and multimedia training to retail store employees in order to improve the employee's and store's performance.

- Capillo, Sales Performance Accountability (1998), teaches that systems/methods for evaluating employee (salesperson) and retail store performance are a common and well known business practices wherein such systems are used to determine recommended actions (training, coaching, feedback, etc.) to improve both the employee's and store's performance. Capillo further teaches collecting and analyzing a plurality of transactional data and developing several individual employee performance metrics including close ratio (conversion rate), average sale, revenue per customer (traffic) and the like.


- Kaydos, Operational Performance Measurement (1999), teaches a plurality of well-known systems and methods for evaluating individual employee and business performance.

Art Unit: 3623

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott L. Jarrett whose telephone number is (571) 272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hafiz Tariq can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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